STATE OF MICHIGAN

COURT OF APPEALS

JENNIFER L. DULEMBA,

Plaintiff-Appellant,

v

THOMAS M. COOLEY LAW SCHOOL,

Defendant-Appellee.

UNPUBLISHED
June 12, 2007

No. 274811
Ingham Circuit Court
LC No. 05-001149-CZ

Before: Talbot, P.J., and Cavanagh and Meter, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendant's motion for summary disposition. We affirm.

Plaintiff filed a complaint, dated September 27, 2005, alleging that defendant violated the persons with disabilities civil rights act, MCL 37.1101, *et seq*., by failing to accommodate her emotional disability. Defendant moved for summary disposition under MCR 2.116(C)(7), arguing that plaintiff was dismissed from the school on September 18, 2002, and that plaintiff's complaint was therefore barred by the applicable three-year limitations period.

On December 5, 2005, plaintiff moved to file an amended complaint. In her motion, she stated, in part:

> On[] Sept. 19, 2005 (Sept. 18, 2005 having been a Sunday) plaintiff attempted to file a complaint in the above captioned action by having 3 copies of a complaint delivered to the clerk of the court via a courier service. On[] Sept. 27, Plaintiff's complaint was actually filed.[1]

Also on December 5, 2005, the trial court heard oral arguments with regard to defendant's motion for summary disposition and plaintiff's motion to file an amended complaint. The court ruled for defendant, stating:

[1] Information provided later revealed that the complaint plaintiff initially attempted to file had not been signed.

> [H]aving read the complaint and the proposed amended complaint, I simply don't envision any circumstances here, given the time sequence[,] that would allow the plaintiff to proceed with any likelihood of success.
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> * * *
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> [T]he letter of September 18th . . . quite clearly spells out that she's been dismissed from Cooley Law School. It seems to me that any action had to have been initiated at least by the 17th or 18th of September of 2005, [and the lawsuit] was not timely filed.

On December 16, 2005, the court issued an order dismissing the case with prejudice.

The court later allowed plaintiff to file an additional complaint after plaintiff indicated to the court that it had "entered [the December 16, 2005] Order despite Plaintiff having filed an objection to entry[.]" Defendant again moved for summary disposition, arguing, in part, that plaintiff's lawsuit was yet again barred by the statute of limitations and that plaintiff had failed to exhaust her administrative remedies. The court reinstated its earlier ruling with regard to the statute of limitations. The court also indicated that plaintiff had failed to exhaust her administrative remedies because she had failed to institute a timely appeal with defendant regarding her dismissal from Cooley Law School. On November 3, 2006, the court entered an order granting defendant's motion for summary disposition.

Plaintiff argues on appeal that the court erred in dismissing her lawsuit based on the statute of limitations. Whether an action is barred by a statute of limitations is a question of law that we review de novo. *Ins Comm'r v Aageson Thibo Agency*, 226 Mich App 336, 340-341; 573 NW2d 637 (1997). We also review de novo a trial court's grant of summary disposition. *Aichele v Hodge*, 259 Mich App 146, 152; 673 NW2d 452 (2003). "In determining whether . . . a claim is . . . barred because of the statute of limitations, a court does so under MCR 2.116(C)(7)." *Bryant v Oakpointe Villa Nursing Centre*, 471 Mich 411, 419; 684 NW2d 864 (2004). "In making a decision under MCR 2.116(C)(7), we consider all documentary evidence submitted by the parties, accepting as true the contents of the complaint unless affidavits or other appropriate documents specifically contradict it." *Bryant*, *supra* at 419.

MCL 600.5805(1) states that

> [a] person shall not bring or maintain an action to recover damages for injuries to persons or property unless, after the claim first accrued to the plaintiff or to someone through whom the plaintiff claims, the action is commenced within the [applicable statutory period].

Under MCL 600.1901, "[a] civil action is commenced by filing a complaint with the court." MCR 2.101(B) similarly states that "[a] civil action is commenced by filing a complaint with a court." MCL 600.5856(a) states that a limitations period is tolled "[a]t the time the complaint is filed, if a copy of the summons and complaint are served on the defendant within the time set forth in the supreme court rules."

The pertinent question, then, is whether the complaint was "filed" within the limitations period such that the "action [was] commenced within the [applicable statutory period]." See MCL 600.5805(1).

Plaintiff admits in her appellate brief that the complaint as initially submitted was not signed. Under MCR 2.114(C)(1), "[e]very document of a party represented by an attorney shall be signed by at least one attorney of record. A party who is not represented by an attorney must sign the document." Plaintiff contends that the complaint's initial lack of a signature was irrelevant because MCR 2.114(C)(2) states that "[i]f a document is not signed, it shall be stricken *unless it is signed promptly after the omission is called to the attention of the party*." (Emphasis added.) Plaintiff evidently believes that her later signing of the complaint essentially "related back" to the time she presented the complaint for filing, such that no violation of the statute of limitations occurred. We cannot agree with plaintiff's position.

First, it is clear that the complaint was not actually "filed" on September 19, 2005. Plaintiff admits in her appellate brief that the complaint was initially stamped as "filed" but that this designation was *crossed out* and a notation of "Rec'd" was made. Plaintiff further admits that "[t]he clerk *refrained from officially filing the complaint* because it lacked a case code and Ms. Dulemba's signature." (Emphasis added.) In addition, no summons was issued upon the initial presentment of the complaint. Such issuance would have occurred had the complaint been "filed." See MCR 2.102(A). Moreover, MCR 8.119(D)(1)(c) provides that "[w]hen a case is commenced, a register of actions form shall be created." A register of actions form was not created upon the initial presentment of the complaint. Clearly no "filing" took place on September 19, 2005.

In *People v Purofoy*, 116 Mich App 471, 482-486; 323 NW2d 446 (1982), the Court discussed the definition of "filed" in the context of deciding whether the defendant had timely filed a petition for removal to a federal court. The Court quoted the following statement from *People v Madigan*, 223 Mich 86, 89; 193 NW 806 (1923): "'It is a well recognized general rule that a paper or document is filed, so far as the rights of the parties are concerned, when it is delivered to and received by the proper officer to be kept on file . . . .'" See *Purofoy*, *supra* at 485. The Court also quoted the following from 36A CJS, pp 396-398:

> "The word 'filed' is customarily used in connection with judicial documents, and in practice the term has a well-defined meaning, signifying delivered to the proper officer and by him received to be kept on file, or in his official custody; delivered into the actual custody of the officer designated by the statute, to be kept by him as a permanent record of his office.
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> "The word carries with it the idea of permanent preservation of the thing so delivered and received that it may become a part of the public record, and includes the idea that the paper is to remain in its proper order on the file in the office.
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> "Generally, the word 'filed' applies only where there is a writing, and where the paper, instrument, or document has been actually delivered, rather than merely deposited in the mail. Thus a paper may be regarded as 'filed' only at the time it is delivered to, and received by, the designated officer, and it is considered

> as 'filed' only when it is delivered to the proper official and by him received and filed." (Footnotes omitted.) [See *Purofoy*, *supra* at 485-486.]

Under the circumstances, including the clerk's crossing out of the "filed" designation, we conclude that there was no "permanent preservation of the thing so delivered and received that it may become a part of the public record." *Id.* at 485 (internal citation and quotation marks omitted). We simply cannot conclude that the clerk intended to keep the unsigned complaint on file as part of a permanent preservation commemorating the initiation of the lawsuit.

Nor do we believe that plaintiff's later signing of the complaint somehow "saved" her lawsuit. MCR 2.114(C)(2) states that "[i]f a document is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party." The later signing of the complaint may have allowed it to refrain from being "stricken," or discarded in its entirety, but we simply cannot read this language to allow for a later-signed complaint to be deemed as having been "filed" upon the initial presentment of the unsigned complaint. We cite with favorableness the following excerpt from defendant's appellate brief:

> [M]ost pleadings can be presented for filing by mere submission and without the action of any clerk. Thus MCR 2.114(C)(2) provides that such pleadings, which were in fact filed, be stricken if the defect is not promptly cured. However, complaints cannot be filed without the action of court personnel to complete the process, including the very important act of issuing a summons so that service can be effected. Moreover, a complaint is not like other pleadings where one can wait for the signature to authenticate the pleading and, if not forthcoming, simply strike the pleading, because it is the complaint which commences the action and tolls the running of the statute of limitations. Thus, it must be complete when filed, which necessarily includes the requisite signature.
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> Moreover, MCR 8.119(C) states:
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> > **Filing of Papers.** The clerk of the court shall endorse on the first page of every document the date on which it is filed. Papers filed with the clerk of the court must comply with Michigan Court Rules and Michigan Supreme Court records standards. *The clerk of the court may reject papers which do not conform to MCR 2.113(C)(1)* and MCR 5.113(A)(1). [Emphasis added.]

Here, the clerk properly rejected the unsigned complaint. The later signing of the complaint cannot somehow transform this rejection into a "filing" for purposes of the statute of limitations. The trial court properly granted summary disposition to defendant.

Plaintiff additionally argues on appeal that the court erred in concluding that plaintiff failed to exhaust her administrative remedies. In light of our above conclusion, we need not address this argument.[2]

Affirmed.

/s/ Michael J. Talbot
/s/ Mark J. Cavanagh
/s/ Patrick M. Meter

[2] We note that the trial court did make an additional pertinent ruling below. It concluded that plaintiff's later-added count of breach of contract/quasi-contract was untenable because (a) there was no contract and (b) there was no evidence that defendant acted in an arbitrary or capricious manner. Plaintiff does not appeal these rulings and we therefore do not address them in this opinion.